

On February 11, 2016 OWCP notified appellant of a proposed termination of her wage-loss compensation benefits as the weight of the medical evidence established that she no longer had continuing residuals or disability as a result of her work-related injury and that she could return to her preinjury job as a clerk. It found that the weight of the medical evidence rested with Dr. Alice Martinson, a Board-certified orthopedic surgeon, serving as the impartial medical examiner. Appellant was afforded 30 days to submit additional evidence.

By decision dated March 15, 2016, OWCP terminated appellant's wage-loss compensation benefits, effective that same date, finding that the weight of the medical evidence rested with Dr. Martinson who found that appellant no longer had continuing disability as a result of her work-related injury. It noted that appellant failed to submit medical evidence contesting the preliminary termination decision.

On April 15, 2016 appellant contested the March 15, 2016 termination decision and requested an oral hearing before an OWCP hearing representative.

A hearing was held on November 7, 2016 wherein appellant testified in support of her claim, consequential injuries, and continued disability.

By decision dated December 14, 2016, an OWCP hearing representative affirmed the March 15, 2016 decision terminating appellant's wage-loss compensation benefits. She noted that OWCP erroneously characterized Dr. Martinson as a referee physician because he belonged to the same practice as the treating physician who formed the conflict with the second opinion physician. The hearing representative found that Dr. Martinson would instead be characterized as a second opinion physician and that his report was sufficient to establish that the weight of the medical evidence rested with Dr. Martinson, finding that appellant was no longer disabled as a result of the April 30, 2012 work injury.

By appeal request form and narrative statement received by OWCP on February 14, 2017, appellant requested reconsideration.

By decision dated May 5, 2017, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for a decision. In its May 5, 2017 denial, OWCP improperly found that appellant's February 14, 2017 request for reconsideration was untimely. It noted that the merit decision was issued on February 11, 2016 and it received appellant's request for reconsideration on February 14, 2017. However the last merit decision in this case regarding the termination of appellant's compensation benefits was the December 14, 2016 decision by OWCP's hearing representative. The Code of Federal Regulations provides that a claimant has one year to timely file an application for reconsideration following a decision on the merits of the claim.¹ As appellant's request for reconsideration was received by OWCP within the one-year time limitation, pursuant to 20 C.F.R. § 10.607(a), her request for reconsideration was timely filed.

The Board will, therefore, set aside OWCP's May 5, 2017 decision and remand the case for issuance of an appropriate final decision based upon appellant's timely request for reconsideration.

¹ 20 C.F.R. § 10.607(a).

IT IS HEREBY ORDERED THAT the May 5, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order.

Issued: May 2, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board